

Opinion No. 66-15

February 1, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Mr. Ethan K. Stevens, City Attorney, P. O. Box 336, Clayton, New Mexico

QUESTION

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May a municipality require by ordinance the wearing of a crash helmet by riders of motor-driven cycles having not more than 5 horsepower?

CONCLUSION

See Analysis.

OPINION

{*19} ANALYSIS

The State of New Mexico authorizes the issuance of a "scooter license" to residents who are at least thirteen years of age. These licenses give the holder the privilege of operating "a motor-driven cycle, motor scooter or a bicycle with motor attached, provided the motor does not produce in excess of five (5) horsepower." § 64-13-40 (3), N.M.S.A., 1953 Compilation (P.S.).

Recently, the Board of Trustees of Clayton has discovered that some youthful motorcycle riders have been involved in collisions which have produced injury to the rider. The Board now wishes to require all riders of these low-horsepower cycles to wear crash helmets. The proposed ordinance to accomplish this specifically applies only to cycles with not more than 5 horsepower as described in Section 64-13-40 (3), *supra*.

In New Mexico, a municipality may adopt an ordinance to provide "for the safety, preserving the health, promoting the prosperity, improving the morals, order, comfort and convenience **of the municipality and its inhabitants**," provided the ordinance is not inconsistent with the laws of New Mexico. § 14-16-1, N.M.S.A., 1953 Compilation (P.S.). (Emphasis supplied.) Does this statute authorize the adoption of the proposed ordinance? We do not think so.

The Constitution of New Mexico, Article II, Section 4, guarantees to men the right to seek and obtain safety and happiness. This section means that each person may seek

his safety and happiness in any way he sees fit so long as he does not unreasonably interfere with the safety and happiness of another.

It cannot be questioned that requiring a motorcycle rider to wear a helmet will render him less likely to be injured. However, if a motorcycle rider chooses to pursue his personal happiness by riding without a helmet it cannot be said that his choice will injure his fellow man. Therefore, the adoption of the proposed ordinance as it stands would be an unconstitutional restriction upon a person's civil liberty, for the ordinance seeks to restrict his liberty when such restriction will not result in a benefit to the public at large or tend to preserve the safety of the community.

It must be pointed out that since the evil sought to be remedied is the protection of the youthful rider the municipality might constitutionally require all motorcycle riders under a certain age to wear safety helmets, so long as the grouping does not include adults. This would be a valid exercise of the power of **parens patriae**, which is the inherent right of the State to safeguard its future by protecting its youth. **Prince v. Massachusetts**, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645. However, as the ordinance now stands it would be applicable to adults as well as children and would, therefore, be unconstitutional if adopted.